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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GERALD D. ENQUIST,

9 Plaintiff,

v.

10 STATE OF WASHINGTON,

11 Defendant.

CASE NO. C17-5091 BHS

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT,
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT,
GRANTING PLAINTIFF LEAVE
TO AMEND, AND STRIKING
TRIAL DATE

13 This matter comes before the Court on Defendant State of Washington's ("State")
14 motion for summary judgment (Dkt. 36) and Plaintiff Gerald Enquist's ("Enquist") cross-
15 motion for summary judgment (Dkt. 39). The Court has considered the pleadings filed in
16 support of and in opposition to the motion and the remainder of the file and hereby rules
17 as follows:

18 **I. PROCEDURAL HISTORY**

19 On February 7, 2017, Enquist filed a motion to proceed *in forma pauperis* and
20 proposed complaint. Dkts. 1, 1-1. Enquist alleged that, as a result of a 1976 arrest and
21 conviction, he must register with the Pierce County Sex/Kidnapping Offender
22 Registration Unit ("SKORU"). *Id.* He claims that he must report on a weekly basis

1 because he is a transient, while similarly situated individuals with a fixed address must
2 only contact SKORU once or if they move to a new address. *Id.*

3 On February 9, 2018, the Court granted Enquist's motion and dismissed his
4 complaint in part. Dkt. 3. The Court dismissed Enquist's right to travel and due process
5 claims in light of *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997). Dkt. 3. The Court
6 allowed Enquist's equal protection claim to proceed and ordered service. *Id.* Enquist
7 filed two motions for reconsideration arguing that he meant to assert an as applied
8 challenge that Defendants Andria Shaw Conger ("Conger"), Paul Pastor ("Pastor"), and
9 Pierce County Sheriff's Department ("Defendants") failed to properly apply state law in
10 his case instead of a facial challenge to Washington's sex offender laws. Dkts. 10, 12.
11 The Court denied both motions because, even under a liberal interpretation of his
12 complaint, he failed to allege an as applied challenge. Dkts. 11, 13. The Court also
13 explicitly informed Enquist that he could file a motion to amend his complaint if he
14 wanted to assert as applied challenges. *Id.* Enquist failed to file such a motion.

15 On April 11, 2017, Defendants filed a motion to dismiss arguing that Enquist must
16 bring a facial challenge against the State and, for other reasons, Enquist failed to name
17 proper parties in his complaint. Dkt. 15. On June 1, 2018, the Court granted the motion,
18 dismissed Defendants, and granted Enquist leave to amend his complaint. Dkt. 22.

19 On June 22, 2017, Enquist filed an amended complaint against the State. Dkt. 23.
20 Enquist asserts that RCW 9A.44.130 violates his constitutional right to travel and equal
21 protection. *Id.*

1 On March 14, 2018, the State filed a motion for summary judgment. Dkt. 36. On
2 April 2, 2018, Enquist responded and filed a cross-motion for summary judgment. Dkt.
3 39. On April 13, 2018, the State replied. Dkt. 42.

4 **II. FACTUAL BACKGROUND**

5 **A. Washington's Statute**

6 Every person living in Washington who has been found guilty of a sex offense or
7 kidnapping offense ("Offender") must register with the county sheriff and provide a
8 variety of information, including the address where they will be living, place of
9 employment, a photograph, and fingerprints. RCW 9A.44.130(1)–(2)(a). Offenders who
10 do not have a fixed address must report to the sheriff's office weekly and provide an
11 accounting of where they stayed during the week. *Id.* § (6)(b).

12 Registered Offenders are not confined to any specific county. Instead, Offenders
13 may leave the county or state, but the Offender must register with the local authorities
14 when the Offender reaches the relevant destination. In other words, transient Offenders
15 who leave the county in which they are registered, and enter another county, must register
16 with the authorities in the new county. *Id.* § (4)(a)(vi). Offenders who leave Washington
17 State must register with the new state and provide notice to the sheriff of the county in
18 which they were last registered in Washington. *Id.* § (4)(a)(viii). With advanced notice to
19 the sheriff, Offenders may also travel outside the United States. *Id.* § (3).

20 **B. Enquist**

21 Enquist was convicted in 1976 of two counts of first degree rape and two counts of
22 robbery. *State v. Enquist*, 163 Wn. App. 41, 44 (2011). He received a thirty-year

1 sentence and was released in April 2007. *Id.* From the date of his release until June
2 2009, Enquist did not register as an offender. *Id.* Enquist was transient during this
3 period, and, under Washington’s former statute, he was required to report weekly to the
4 local sheriff. *Id.* Enquist was convicted of failing to register. *Id.* Enquist appealed the
5 conviction arguing that the registration statute (1) violated the ex post facto clause of the
6 Washington constitution, (2) facially violated his constitutional right to travel, and (3)
7 violated his constitutional right to travel as applied to him. *Id.* at 45–52. The
8 Washington Court of Appeals upheld the conviction concluding in relevant part that
9 “transient sex offender registration requirements are a legitimate and necessary aid to law
10 enforcement, are not unduly burdensome, and do not unconstitutionally limit transient
11 sex offenders’ right to travel.” *Id.* at 44.

12 In August of 2016, Enquist was registered in Pierce County and, being transient,
13 was required to report weekly to the SKORU. On August 1, 2016, Enquist sent a letter to
14 Sheriff Pastor indicating his intent to travel on August 17, 2016. Dkt. 39 at 22. Enquist
15 and friends had planned a camping trip in various National Parks located in Washington,
16 Idaho, Montana, South Dakota, Wyoming and Oregon. Dkt. 39 at 2. In response to his
17 letter, Enquist declares that Conger, an office assistant with the SKORU, requested that
18 Enquist provide the exact dates and addresses of where he would be staying on his
19 camping trip. *Id.* at 24. Conger admitted that she requested this information from
20 Enquist and that the “law requires he do so.” *Id.* at 29. Enquist responded that he did not
21 have an exact itinerary and that Conger’s request directly and indirectly impinged Enquist
22 right to travel. *Id.* at 24.

1 On September 26, 2016, Enquist filed a complaint with the sheriff's office based
2 on Conger's action in denying his travel request. *Id.* at 25. Enquist claims that Conger
3 denied Enquist's request to travel pursuant to the sheriff's policy 1020, but neither
4 Conger nor any other employee with SKORU would produce a written policy supporting
5 Conger's position. *Id.*

6 III. DISCUSSION

7 There are a number of issues that the Court must address before reaching the
8 merits of the parties' motions. First, Enquist concedes that he failed to recognize that the
9 Court granted him leave to amend to assert as applied claims against Pastor and Conger
10 in their individual capacity. Dkt. 39 at 5 n.9. Because the Court has not addressed the
11 merits of these claims, the Court finds that there are two possible ways in which Enquist
12 may bring these claims. After addressing the merits of Enquist's facial challenges, the
13 Court could strike the trial date and grant Enquist leave to amend. Alternatively, the
14 Court could find that it is too late in this proceeding to amend the complaint. If the Court
15 closed this matter, then Enquist could conceivably file a new motion to proceed *in forma*
16 *pauperis* and a new complaint asserting these claims. The Court finds that there is no
17 need to engage in these unnecessary procedural hurdles when Enquist is an elderly,
18 homeless, pro se litigant with viable constitutional claims. Therefore, the Court grants
19 Enquist leave to amend his complaint to assert claims against Pastor and Conger in their
20 individual capacity for as applied challenges to the Washington registration statutes
21 and/or the relevant Pierce County policies.
22

1 Second, the State argues that Enquist lacks standing to bring as applied challenges
2 against the State. The Court, however, finds that Enquist’s complaint fails to allege such
3 challenges. Even if it did, the Court agrees with the State that Enquist lacks standing to
4 bring such challenges against the State because the State was not involved in the denial of
5 Enquist’s travel request. The State only appeared to defend the facial validity of the
6 statutes in question.

7 Third, in his opposition, Enquist includes some complaints regarding the
8 information he must provide on a weekly basis, the facilities Pierce County provides for
9 reporting, and that the reporting statute discriminates against poor people. The Court
10 finds that the first two issues go beyond the scope of the complaint and, as asserted in his
11 opposition, appear to be as applied claims against Pierce County. Regarding the latter
12 issue, the State argues that “Enquist’s passing reference to a claim that the statute
13 unconstitutionally discriminates against transient offenders ‘due to poverty’ is waived.”
14 Dkt. 42 at 11 (*Moreno Roofing Co. v. Nagle*, 99 F.3d 340, 343 (9th Cir. 1996)). Contrary
15 to the State’s argument, Enquist asserted this claim in his complaint. Dkt. 23, ¶ 21.
16 Although he asserted it as a Fourth Amendment claim, it is in the complaint, and the State
17 failed to address it in its motion for summary judgment. Because the Court declines to
18 *sua sponte* consider the merits of the claim or convert the claim to an equal protection
19 claim, Enquist has shown that at least one claim survives the State’s summary judgment
20 motion. The Court, however, finds that trial is unnecessary at this time and will strike the
21 trial date in anticipation of further proceedings on this and other issues.
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1 With these preliminary issue addressed, the Court will turn to the merits of the
2 parties' motions.

3 **A. Summary Judgment Standard**

4 Summary judgment is proper only if the pleadings, the discovery and disclosure
5 materials on file, and any affidavits show that there is no genuine issue as to any material
6 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
7 The moving party is entitled to judgment as a matter of law when the nonmoving party
8 fails to make a sufficient showing on an essential element of a claim in the case on which
9 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
10 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
11 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
12 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
13 present specific, significant probative evidence, not simply "some metaphysical doubt").
14 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
15 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
16 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
17 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d
18 626, 630 (9th Cir. 1987).

19 The determination of the existence of a material fact is often a close question. The
20 Court must consider the substantive evidentiary burden that the nonmoving party must
21 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
22 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual

1 issues of controversy in favor of the nonmoving party only when the facts specifically
2 attested by that party contradict facts specifically attested by the moving party. The
3 nonmoving party may not merely state that it will discredit the moving party's evidence
4 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
5 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
6 nonspecific statements in affidavits are not sufficient, and missing facts will not be
7 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

8 **B. Facial Challenge**

9 Enquist "can only succeed in a facial challenge by 'establish[ing] that no set of
10 circumstances exists under which the Act would be valid,' *i.e.*, that the law is
11 unconstitutional in all of its applications." *Washington State Grange v. Washington State*
12 *Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S.
13 739 (1987)). Enquist asserts that Washington's registration statute violates his equal
14 protection rights and his right to travel.

15 **1. Equal Protection**

16 "The Equal Protection Clause does not forbid classifications. It simply keeps
17 governmental decisionmakers from treating differently persons who are in all relevant
18 respects alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (citing *F.S. Royster Guano*
19 *Co. v. Virginia*, 253 U.S. 412, 415 (1920)). In determining whether a statute violates the
20 Equal Protection Clause, the courts begin by determining the proper level of scrutiny.
21 *Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1141 (9th Cir. 2011).
22 When the statute does not concern a suspect class, rational basis is applied. *Id.* Because

1 transient persons do not constitute a suspect class, rational basis is the applicable
2 standard. *See Joel v. City of Orlando*, 232 F.3d 1353, 1359 (11th Cir. 2000) (“homeless
3 persons are not a suspect class”).

4 Under rational basis review, the question is whether the registration requirements
5 for transient offenders are “rationally-related to a legitimate governmental interest.”
6 *Wright*, 665 F.3d at 1141 (internal quotation marks omitted). “[T]he rational basis
7 standard does not require that the state choose the fairest or best means of advancing its
8 goals[.]” *Robinson v. Marshall*, 66 F.3d 249, 251 (9th Cir. 1995). Instead, courts
9 “merely look to see whether the government could have had a legitimate reason for acting
10 as it did.” *Currier v. Potter*, 379 F.3d 716, 732 (9th Cir. 2004) (internal quotation marks
11 omitted).

12 In this case, Enquist first argues that transient offenders are treated differently than
13 fixed address offenders. Dkt. 39 at 7–10. Enquist, however, fails to show that these two
14 groups of individuals are similarly situated. While individuals in both groups are
15 Offenders who must register with local authorities, the similarities end there. The
16 relevant difference is that one group of individuals has a fixed address and the other
17 group does not. This difference is significant because, in the context of registering an
18 address with the government, one group is able to provide an address and the other is not.
19 Moreover, if the government needs to contact an Offender, an Offender with a fixed
20 address has provided the presumptive location he or she may be located. On the other
21 hand, the government only knows that a transient Offender is presumptively somewhere
22 within the county and can reasonably expect these Offenders to check-in on a weekly

1 basis. Thus, for the purposes of this analysis, Enquist has failed to show that government
2 authorities treat “differently persons who are in all relevant respects alike.” *Nordlinger*,
3 505 U.S. at 10.

4 Even if Enquist is correct that transient and fixed address Offenders are similarly
5 situated, the State has advanced a rational basis for treating such individuals differently.
6 The State asserts that it has “a legitimate interest in tracking the shifting location of
7 transient offenders.” Dkt. 36 at 10. The Court agrees because the “risk of recidivism
8 posed by sex offenders is ‘frightening and high.’” *Smith v. John Doe I*, 538 U.S. 84, 103
9 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)). Registration protects public
10 safety “by alerting the public to the risk of sex offenders in their community.” *Smith*, 538
11 U.S. at 103. Although Enquist provides some evidence in support of the assertion that
12 there is “no reduction in sexual recidivism due to registries,” such evidence goes to the
13 propriety of the registry statute in general and does not support Enquist’s challenge to the
14 provision regarding transient Offenders. Overall, Enquist’s equal protection challenge
15 fails because the State has provided a rational basis for requiring transient offenders to
16 check in with county sheriffs on a weekly basis whether or not transient offenders are
17 similarly situated to fixed address offenders. Therefore, the Court grants the State’s
18 motion on Enquist’s equal protection claim.

19 **C. Right to Travel**

20 Although Enquist’s complaint appears to assert a facial challenge to the statute as
21 a violation of his rights to travel, he does not seriously contest the State’s motion in his
22 opposition. *See* Dkt. 39 at 16. Even if he did, it would be difficult for Enquist to

1 overcome the Washington Supreme Court’s rejection of this challenge. *Enquist*, 163 Wn.
2 App. at 49–52. That court concluded that the registration statute is constitutionally valid
3 even though it imposes some burdens on Offenders that travel. *Id.* Enquist has failed to
4 provide any evidence, argument, or authority for the proposition that the statute violates
5 the federal constitution despite the conclusion that it does not violate the state
6 constitution. Therefore, the Court grants the State’s motion on this issue.

7 To the extent that Enquist is troubled by the alleged threat by Pierce County
8 officials that a felony arrest warrant would issue if Enquist failed to provide his exact
9 whereabouts and/or itinerary during a planned multistate camping trip, these issues will
10 be addressed if Enquist properly amends his complaint. At this time, however, these
11 issues are beyond the bounds of the complaint, and the Court declines to address them.

12 IV. ORDER

13 Therefore, it is hereby **ORDERED** that the State’s motion for summary judgment
14 (Dkt. 36) is **GRANTED** and Enquist’s cross-motion for summary judgment is **DENIED**.
15 Enquist may file an amended complaint consistent with this order no later than June 15,
16 2018.¹ If Enquist fails to file an amended complaint, the Court will request a joint status
17 report regarding how the parties intend to proceed on Enquist’s remaining Fourth
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19 ¹ Enquist may be interested in the Federal Bar Association’s civil rights clinic. “The Federal Civil
20 Rights Legal Clinics offer free, limited legal advice and referrals to King and Pierce County residents.
21 The Clinic focuses on Washington State residents who are contemplating filing or have already filed legal
22 actions in the United States District Court for the Western District of Washington and who are
encountering challenges accessing our legal system.” http://www.fba-wdwas.org/legal_clinic.php. “For
additional information about the Tacoma Clinic, or to schedule an appointment in Tacoma, please call:
253.572.5134. Phone lines are open Monday through Thursday from 9:00 am to 12:00 pm and 1:15 pm to
4:00 pm.” *Id.*

1 Amendment claim. Regardless, the Court strikes the current trial date and pending trial
2 motions from the Court's calendar.

3 Dated this 17th day of May, 2018.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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